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93-924

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CASE NO. _____

IN THE SUPREME COURT OF THE
UNITED STATES
October Term, 1993

WILLIAM H. BRECK,

Petitioner,

v.

VILLAGE ON THE BAY DEVELOPMENT, et al.

Respondents.

PETITION FOR WRIT OF CERTIORARI
TO THE
FIRST DISTRICT COURT OF APPEAL OF
THE STATE OF CALIFORNIA

BRIEF OF RESPONDENTS

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December 30, 1993

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PROPERTIES, INC.

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19 pp

TABLE OF CONTENTS

		Page
I.	INTRODUCTION AND SUMMARY OF ARGUMENT	1
II.	LEGAL ARGUMENT	4
	A. The United States Supreme Court Does Not Have Jurisdiction To Hear This Appeal . . .	4
	B. Petitioner's Appeal Involves Neither A Federal Question Nor A Constitutional Issue .	10
	C. Procedurally, The Petition Fails To Satisfy Rule 14 . . .	14
III.	CONCLUSION	15

TABLE OF AUTHORITIES

CASES Page

Hammerstein v. Superior Court of California, 341 U.S. 491, 71 S.Ct. 820 (1951) 5

Illinois v. Gates, 462 U.S. 213, 103 S.Ct. 2317 (1983) . 9

Reich v. City of Freeport, 388 F.Supp. 953 (N.D. Ill. 1974) 8

Thompson v. City of Louisville, 362 U.S. 199, 80 S.Ct. 624 (1960) 12

STATUTES

12 U.S.C.
Section 1257(a) 4

28 U.S.C.
Section 1257 2

California Code of Civil Procedure, Section 906 . . 11

OTHER AUTHORITIES

Rules of Supreme Court of the United States
Rule 10.1 2
Rule 10 6
Rule 10.1(b) 7
Rule 10.1(c) 7
Rule 14.5 14
Rule 15 1

I. INTRODUCTION AND SUMMARY OF ARGUMENT

Pursuant to Rule 15 of the Rules of the Supreme Court of the United States, respondents VILLAGE ON THE BAY DEVELOPMENT, PACIFICA BAY VILLAGE ASSOCIATES, INC., JP VILLAGE BAY PARTNERS, and JONATHAN GROUP PROPERTIES, INC. (hereinafter collectively "Respondents") submit the following Opposition to Petition For Writ of Certiorari filed by petitioner WILLIAM H. BRECK (hereinafter "Petitioner").

A cursory review of Petitioner's Petition For Writ of Certiorari (hereinafter

"Petition") reveals that this Court lacks jurisdiction to review this matter. Pursuant to 28 U.S.C. Section 1257, and Rule 10.1 of the Rules of Supreme Court of the United States, this Court shall only review a decision of a state court which involves a federal question. Petitioner fails to cite a valid federal question or constitutional issue to invoke this Court's jurisdiction. Indeed, this appeal concerns the continued validity of a deed of trust after settlement of litigation relating to the deed of trust, purely a state law issue.

This Court, without having the benefit of reviewing the numerous motions and appeals in this case, undoubtedly may find the Petition confusing and ambiguous. The essence of Petitioner's appeal to the California Supreme Court, and to this Court, is that the holding of the California Court of Appeal is contrary to California law. The California Supreme Court considered this very same argument and denied Petitioner's Petition For Review. The Petition raises spurious constitutional claims which continue to argue the same issue identified, and rejected, by both the

California Court of Appeal and the California Supreme Court -- i.e., the application of California law concerning the settlement of litigation. In the absence of a federal question, this Court lacks jurisdiction to hear this Petition For Writ of Certiorari.

II. LEGAL ARGUMENT

A. The United States Supreme Court Does Not Have Jurisdiction To Hear This Appeal

This Court's jurisdiction to review a final judgment of a state court is set forth in 12 U.S.C. Section 1257(a):

> Final judgments or decrees rendered by the highest

> court of the state in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of any state is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or any title, right, privilege or immunity especially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States.

This Court's authority to review a state court judgment by writ of certiorari is purely discretionary. Hammerstein v. Superior Court of California, 341 U.S. 491, 492, 71 S.Ct. 820, 821 (1951). Although Petitioner has failed to

identify the genesis of this Court's jurisdiction over its appeal, and specifically has failed to identify which treaty or statute of the United States is drawn into question, or whether a statute or ruling by the State of California is "repugnant to the Constitution, treaty, or laws of the United States", the fact remains that this appeal does not concern any federal question or constitutional right (see section B, infra).

Indeed, Rule 10 of the Rules of the Supreme Court of the United States sets forth the considerations for granting review of the writ of

certiorari in cases originated from the state courts (1) when the state court has decided a federal question in a way that conflicts with the decision of other state courts or United States Courts of Appeal (Rule 10.1(b)), or (2) when the state court has decided an important question of federal law which has not been, but should be, settled by this Court, or has decided a federal question in a way which conflicts with the applicable decisions of this Court (Rule 10.1(c)) (emphasis added). Nothing in the California Court of Appeal's decision: (1) involves a federal question, or

(2) conflicts with any decision of any other court. A federal court has no power to review a state court decision unless a substantial federal question is involved. Reich v. City of Freeport, 388 F.Supp. 953 (N.D. Ill. 1974).

Petitioner's own actions indicate that he manufactured constitutional issues for the sole purpose of continuing his appeal in this Court. Indeed, at the state trial court, at the California Court of Appeal, and in Petitioner's Motion For Rehearing at the California Court of Appeal, Petitioner never raised any federal or constitutional issues.

Petitioner first noted various inapplicable constitutional claims in his Petition for Review at the California Supreme Court. This Court lacks jurisdiction if a federal question or constitutional issue has not been raised and decided by a state court. Illinois v. Gates 462 U.S. 213, 103 S.Ct. 2317 (1983). Petitioner failed to raise these constitutional issues at the California Court of Appeal, the very judgment he seeks to reverse, and therefore this Court lacks jurisdiction to hear this appeal.

B. Petitioner's Appeal Involves Neither A Federal Question Nor A Constitutional Issue

In pages 24 through 28 of the Petition, Petitioner vainly applies various constitutional issues in order to federalize his appeal, but completely fails to articulate how the California court rulings violate any constitutional provision.

For example, in the second full paragraph of page 25, Petitioner cites alleged unfair and unequal treatment arising from the California Court of Appeal's refusal to review de novo the factual determinations

of the trial court, yet his cited authority fails to support this assertion. Indeed, California Code of Civil Procedure section 906 gives the Court of Appeal discretionary, not mandatory, authority to review the facts in the trial court. Petitioner apparently argues, without any legal authority, that the California Court of Appeal's failure to overturn the factual determinations of the trial court violated the United States Constitution.

In the very next paragraph, Petitioner declares that the California Court of Appeal's disregard of "undisputed"

evidence deprived Petitioner of due process, yet his cited authority involves cases in which this Court required some evidence, even circumstantial evidence, before upholding a criminal conviction. Thompson v. City of Louisville, 362 U.S. 199, 80 S.Ct. 624 (1960). In this case, substantial evidence supported the trial court's determination in this civil litigation. Petitioners' cited authority are inapplicable to this case.

Petitioner's next paragraph demonstrates the true absurdity of this Petition. Petitioner declares that the California Court of Appeal's decision,

"made in disregard of the plainly applicable statute law of the state, and disregard of the controlling decision of the highest state court", violated the Petitioner's due process rights. Petitioner made this very same argument to the Supreme Court of the State of California in his Petition For Review, which the California Supreme Court denied. The entire basis of this appeal (i.e., that the California Court of Appeal decision was contrary to California law) would be more persuasive if the California Supreme Court had not rejected this same assertion.

C. Procedurally, The Petition Fails To Satisfy Rule 14

Although the Petitioner is an attorney who has represented himself in pro per, all his prior pleadings, including the present Petition, have sufficiently lacked accuracy, brevity, and clarity, causing opposing counsel and the courts much consternation. Pursuant to Rule 14.5[1] of the Rules of the Supreme Court of the United States, this Court should deny

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[1] "The failure of a petitioner to present with accuracy, brevity, and clearness whatever is essential to a ready and adequate understanding of the points requiring consideration will be a sufficient reason for denying the petition."

the Petition on these same grounds.

III. CONCLUSION

This Court lacks jurisdiction to hear this appeal. The Petition neither raises a federal question nor a constitutional issue which conflicts with the decisions of other state or federal courts. Furthermore, no important question of federal or constitutional law is raised by this appeal, nor was raised at the California Court of Appeal. This appeal solely concerns application of California state law and the California Courts have consistently applied this

law adverse to Petitioner. No basis exists for granting Petitioner's Petition For Writ of Certiorari.

December 30, 1993

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